3322.

SUPREME COURT OF THE UNITED STATES.

No. 103.

TIMOTHY FANNING, APPELLANT,

vs.

CHARLES GREGOIRE AND CHARLES BOGY.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE DISTRICT OF IOWA.

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GIDEON, Print.

UNITED STATES OF AMERICA,
District of Iowa, northern division.

Pleas before the honorable John J. Dyer, judge of the United States district court, for the district of Iowa, at the January term, in the year of our Lord one thousand eight hundred and fifty-three, of said court, held in the city of Dubuque, Iowa, in and for the northern division of said district.

Witness:
JOHN J. DYER, *Judge.*
T. S. PARVIN, *Clerk.*
STEPHEN B. SHELLEDY, *Marshal.*

United States district court, for the northern division of Iowa.

Be it remembered, that on the 15th May, A. D. eighteen hundred and fifty-two, the following transcript was filed in the said court by Platt Smith and James M. McKinlay, attorneys for Charles Gregoire and Charles Bogy, which is as follows, to wit:

STATE OF IOWA,
Dubuque county, ss.

Pleas before the honorable T. S. Wilson, judge of the second judicial district, of the district court in and for the county and State aforesaid, at the May term of our court aforesaid, in the year of our Lord one thousand eight hundred and fifty-two.

Witness:
T. S. WILSON, *Judge.*
BENJ. RUPERT, *Clerk.*
WM. G. STEWART, *Sheriff.*

To the honorable the district court of the county of Dubuque, State of Iowa. To May term, 1852.

Your petitioner, Timothy Fanning, of said county, respectfully represents, that by an act of the legislative assembly of the Territory of Iowa, approved December fourteenth, A. D. eighteen hundred and thirty-eight, your petitioner was authorized to establish and keep a ferry across the Mississippi at the town of Dubuque, and county aforesaid, and to depart from and land at any place on the public landing of said town for the term of twenty years from the passage of said act; that the said legislature, by the act aforesaid, further enacted, that no court or board of county commissioners should authorize any other person to keep a ferry within the limits of said town of Dubuque, unless thereinafter provided by said act; that in said act there was a provision that your petitioner should, within two years from the passage of said act, procure for said ferry a good and sufficient steam ferry-boat, which

should be kept at said ferry for the transportation of all persons and their property across said stream without delay; and until said ferry-boat should be procured, as aforesaid, your petitioner was required to keep at said ferry a good and sufficient number of flat-boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river (when crossable) without delay. Your petitioner further states, that by an act of the legislature aforesaid, approved July twenty-fourth, eighteen hundred and forty, amendatory of the act aforesaid, it was enacted that the first aforesaid act should be so altered and amended as to authorize your petitioner to keep a horse ferry-boat instead of the steam ferry-boat, mentioned in the first act aforesaid, and that if your petitioner should procure a good and sufficient horse ferry-boat, which should be kept at said ferry for the transportation of all persons and their property across said river without delay, within the time prescribed in the act to which this is amendatory, to wit, the fourteenth day of December, eighteen hundred and forty, it should be considered a compliance with requisition of said acts. Your petitioner avers that the said acts of the legislature aforesaid conferred upon him the exclusive privilege of ferrying across the river aforesaid, and of transporting passengers, their baggage, teams, &c., &c., during the twenty years specified in said act, upon his compliance with the requisitions of said act. Your petitioner avers that he has in all respects fully complied with the provisions of the act aforesaid, and has incurred great trouble and expense in furnishing horse ferry-boats and supplying the same with hands, at the early settlement of this country, when the small amount of business done at this ferry did not adequately compensate him for his trouble and expense aforesaid; yet he was encouraged to persevere, in the hope and belief that in the progress of time the business of said ferry would so increase as to remunerate him for past losses, and would afford him a reward for his labor and a support for himself and family. Yet so it is, may it please your honor, that Charles Gregoire and Charles Bogy, combining and confederating with others to your petitioner unknown, how to injure and defraud your petitioner out of the profits of the said ferry right aforesaid, have placed upon the ferry at the town of Dubuque aforesaid a steam ferry-boat, for the transportation of passengers, their teams, baggage and freight, from the said town across the Mississippi river aforesaid, and are charging said passengers, ferriage, freight, &c., for such transportation, and applying the same to their own use and benefit, and claim that they, the said Gregoire and Bogy, have full and perfect right so to do, although the said term of twenty years specified in such act of the legislature has not yet transpired, all of which your petitioner avers is contrary to law and equity, and in violation of his just rights vested in him by the act aforesaid; a copy of which is annexed hereto, marked A and B, and which your petitioner prays may be made a part of this his petition. He therefore prays that the said Gregoire and Bogy may be made parties defendant to this petition, and compelled to answer the same; and upon a final hearing herein, that they may be

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compelled to pay over to your petitioner whatever money they may have received for ferriage, freight, &c., for the transportation aforesaid, and that they may be enjoined from further ferrying during your petitioner's term aforesaid; and that until a final hearing *that* the said Gregoire and Bogy, their agents and servants, may be temporarily enjoined as aforesaid, and that your petitioner may have such other and further relief as may be considered just and equitable.

T. S. and D. S. WILSON,
Attorneys for petitioner.

STATE OF IOWA, *Dubuque county, ss.*

Personally appeared before the undersigned, David S. Wilson, a notary public in and for the county and State aforesaid, Timothy Fanning, who being duly sworn by me says, that the matters and things set forth in the above petition are true to the best of his knowledge and belief.

TIMOTHY FANNING.

Sworn to and subscribed before me, this 13th day of April, A. D. 1852.

DAVID S. WILSON,
Notary public of Iowa, in and for Dubuque county.

A.—Ferries.

An act to authorize Timothy Fanning to establish and keep a ferry across the Mississippi river at the town of Dubuque.

Sec. 1st. Be it enacted by the Council and House of Representatives of the Territory of Iowa: That Timothy Fanning, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river at the town of Dubuque, in the county of Dubuque, and to depart from, and land at any place on the public landing of said town which was set apart for public purposes by the act of Congress, approved third day of July, A. D., eighteen hundred and thirty-six, for the term of twenty years, from the passage of this act: Provided that the said ferry when so established shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be by the laws of this territory, fixing the rate of toll and prescribing the manner in which licensed ferries shall be kept and regulated.

Sec. 2. And be it further enacted, that no court or board of county commissioners shall authorize any person (unless as hereinafter provided for by this act) to keep a ferry within the limits of the town of Dubuque. Provided, that the said Timothy Fanning, his heirs and assigns, shall within two years from the passage of this act, procure for said ferry a good and sufficient steam ferry-boat, which shall be kept at said ferry for the transportation of all persons and their property across said river without delay; and until said ferry-boat shall be provided as

aforesaid, the said Timothy Fanning shall keep at said ferry a good and sufficient number of flat-boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river (when possible) without delay; and should the law regulating ferries now prescribed, or hereafter to be prescribed, be violated by said Timothy Fanning, his heirs or assigns, or if no good and sufficient steam ferry-boat be provided at the time required by this charter, upon proof thereof, to be made to the satisfaction of the board of county commissioners or to the county court (as the case may be) of the county of Dubuque, the above charter, if so violated, shall be declared void, and said ferry shall thereafter be disposed of as other ferries are under the laws regulating ferries. This act to be in force from and after its passage.

Approved, December 14th, 1838.

B.

An act to amend an act entitled an act to authorize Timothy Fanning to establish and keep a ferry across the Mississippi river at the town of Dubuque.

Section 1. Be it enacted by the Council and House of Representatives of the Territory of Iowa, That the aforesaid act, to which this is an amendment, be and is hereby so altered and amended as to authorize Timothy Fanning, his heirs and assigns, to keep a horse ferry-boat; and that if the said Fanning, his heirs or assigns, shall procure a good and sufficient horse ferry-boat, which shall be kept at said ferry for the transportation of all persons and their property across said river without delay, within the time prescribed in the act to which this is an amendment, to wit, the fourteenth day of December, eighteen hundred and forty, it shall be considered a compliance with the requisitions of said act; provided that nothing herein contained shall be so constructed as to prevent the said Fanning, his heirs and assigns, from keeping at said ferry a steam ferry-boat.

Approved July 24, 1840.

At Chambers.

STATE OF IOWA,
Dubuque county, ss.

I allow an injunction to issue as prayed for in the above or within bill, to remain in force until the second day of the next term of the district court of Dubuque county, Iowa.

Previous to issuing said writ of injunction, the said Fanning will file a bond, with surety, to be approved by you, in the sum of five hundred dollars, for the benefit of the defendants, with the conditions required by law.

To the clerk of the district court of Dubuque county, Iowa.

April 14, 1852.

WILLIAM Y. LOVELL,
County Judge.

Know all men by these presents that we, Timothy Fanning and William Young, are held and firmly bound unto Charles Gregoire and Charles Bogy in the penal sum of five hundred dollars, to the payment of which we hereby bind ourselves, our heirs, executors and administrators, firmly by these presents. Witness our hands and seals, this 14th day of April, 1852.

The condition of the above obligation is such, that whereas said Fanning has filed a petition in the district court of said county, against said Bogy and Gregoire, praying for an injunction against them, to prevent them from interfering with his ferry privilege, by carrying passengers from Dubuque city across the Mississippi river, which said petition was this day presented to Hon. William Y. Lovell, and on which a writ of injunction has been allowed by said Lovell to remain in force until the 11th day of May, 1852. Now if said Fanning shall pay all the damages which may be adjudged against him by reason of such injunction, then this obligation to be void, otherwise of full force and virtue.

TIMOTHY FANNING, [SEAL.]
W. YOUNG, [SEAL.]

Witness: T. S. WILSON.

Approved by me, this 16th day of April, 1852.

BENJAMIN RUPERT, *Clerk.*

THE STATE OF IOWA,
Dubuque county, ss.

To Charles Gregoire and Charles Bogy, their agents and servants:

Whereas, Timothy Fanning has filed a petition in the district court of said county, praying for an injunction against you, the said Bogy and Gregoire, praying that you may be restrained from carrying passengers, their teams &c., across the Mississippi river, from the town of Dubuque, Iowa; and whereas, the said petition has been presented to the Hon. William Y. Lovell, judge of the county court of said county, who, upon hearing the same, allowed an injunction to issue as prayed for in said petition; now, therefore, in the name of the State of Iowa, you, the said Bogy and Gregoire, your agents and servants, are restrained and enjoined from ferrying as aforesaid across the Mississippi river any persons, teams, freight, &c., or in any wise interfering with the ferry privilege of said Fanning, until the 12th day of May, 1852; hereof fail not.

Witness, Benj. Rupert, clerk of district court for said county, with the seal of office hereto affixed, at office, in the city of Dubuque, this 14th day of April, A. D. 1852.

[Seal of the District court.]

BENJ. RUPERT, *Clerk.*

Served the within injunction, by reading the same personally to

Charles Bogy, and by leaving a copy with Burt, the attorney for plaintiff.

WM. G. STEWART, *Sheriff D. C.*
By W. P. WRIGHT, *Deputy.*

April 14th, 1852.

Petition for injunction.

DISTRICT COURT, *Dubuque county, Iowa.*

CHARLES GREGOIRE & CHARLES BOGY } ads. TIMOTHY FANNING. }

And now comes Charles Gregoire and Charles Bogy, defendants, and state to the said court that the said Charles Gregoire now is, and at the time of the commencement of this action was, a citizen and resident of the State of Missouri; that the said Charles Bogy now is, and at the time of the commencement of this action was, a resident and citizen of the State of Illinois; and that the said Timothy Fanning, plaintiff, now is, and at the time of the commencement of this action was, a citizen and resident of the State of Iowa.

And the defendant further states, that the matters in dispute in this action involve the right of these defendants to have and enjoy the privilege of ferrying across the Mississippi river, from the city of Dubuque, in the State of Iowa, to a point opposite in the State of Illinois, and receiving and demanding pay for the transportation of passengers, their teams, freight, &c., for the term of six years, from the first day of April, A. D. 1852, under a license granted *to* the city of Dubuque to them, the said defendants, and that the sum and value of such matter in dispute exceeds the sum of five hundred dollars, exclusive of costs.

These defendants, therefore, pray that the said action may be removed to the next district court of the United States, to be holden in the northern division of the district of the State of Iowa, which includes the county of Dubuque; and present, with their petition, their security, as required by law.

CHARLES GREGOIRE,
By Charles Bogy, his agent.
CHARLES BOGY.

Dubuque, May 10th, 1852.

SMITH & McKINLAY,
HEMPSTEAD & BURT,
Att'ys for defts.

STATE OF IOWA, *Dubuque county, ss.*

Charles Bogy, one of the defendants in the within petition named, being duly sworn, says, that he has read the said petition and knows the contents thereof, and that it is true in substance and fact, of his own knowledge; and the said deponent further says, that the matters in

dispute in the action therein named exceeds the sum and value of five hundred dollars, exclusive of costs; and further says not.

CHARLES BOGY.

Subscribed and sworn before me, this 7th day of May, A. D. 1852.

BENJ. RUPERT, *Clerk.*

Know all men by these presents, that we, Charles Gregoire and Charles Bogy, as principals, and S. Shomo and William Ashley Jones, as surety, are jointly and severally held and firmly bound unto Timothy Fanning in the sum of two thousand dollars; to the faithful payment of which to the said Timothy Fanning, his heirs, executors, administrators, or assigns, we do hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators, if default be made in the following conditions. Sealed with our seals, and dated this 7th day of May, A. D. 1852.

The condition of this obligation is such, that whereas the said Timothy Fanning has filed his petition in the district court of Dubuque county, in the State of Iowa, against the above *bounded* Charles Gregoire and Charles Bogy, praying an injunction, and to restrain them from carrying passengers, their teams, freight, &c., across the Mississippi river, from the town of Dubuque. And whereas the said Charles Gregoire and Charles Bogy have presented their petition to the said district court aforesaid, praying that the said petition, and the action thereon pending, may be removed from the said district court to the next district court of the United States to be holden in the northern division of the district of the State of Iowa.

Now, if the said Charles Gregoire and Charles Bogy, defendants, on the first day of the next term of the district court of the United States, to be holden in the northern division of the district of Iowa, shall enter in the said court copies of said process against them, and shall then and there in the said court appear to the said action, and shall, in all respects, comply with the requirements of the original process in said cause, then, and in such case, this obligation shall be void, but otherwise of full force and virtue.

CHARLES GREGOIRE, [L. S.]
By Charles Bogy, his agent.
CHARLES BOGY. [L. S.]

Sealed and delivered in presence of—

S. SHOMO, [L. S.]
WM. ASHLEY JONES. [L. S.]

Injunction.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE & CHARLES BOGY.

This cause came up to be heard, and, on the motion and application of defendants' attorneys, this cause, and the papers in it, were ordered

to be removed to the United States district court, for the district of Iowa.

STATE OF IOWA, *Dubuque county, ss.*

I, Benj. Rupert, clerk of the district court, in and for the county and State aforesaid, do hereby certify, that the foregoing is a true copy and transcript of all the papers and record in the foregoing entitled cause, wherein T. Fanning is plaintiff and Charles Gregoire and Charles Bogy are defendants, as the same remains on file for record in my office.

Witness my hand and seal of said court hereto affixed, at my office, in the city of Dubuque, this 13th day of May, A. D. 1853.

[L. S.]

BENJ. RUPERT, *Clerk.*

District court of the United States, district of Iowa, northern division.
14th May, 1852.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE and CHARLES BOGY.

And the said defendants, saving and reserving unto themselves all manner of answer and exception to plaintiff's petition, for an answer to so much of said petition as asks for a special injunction, state that the said Fanning has a charter to ferry across the Mississippi at Dubuque, as stated in the petition, with this exception, that the said charter is not exclusive; they admit that they are running a steam ferry-boat across the Mississippi, to and from the city of Dubuque, which is necessary for the accommodation of the traveling public; they state that said steam ferry-boat was put on and is run by these defendants in accordance with a contract made with the city of Dubuque, authorizing the running of said ferry-boat for six years from the first day of April, 1852; that these defendants, by running the said steam ferry-boat or otherwise, do not in any manner interfere with the said Timothy Fanning, or his ferry, or his right to carry passengers from this side, other than such interference as is necessarily the result of a fair competition in the business, and such consequences as result from the superior accommodation afforded by the said steam ferry-boat; that said steam ferry-boat cost upwards of five thousand dollars, and that such a boat is required for the public service at this place; that the said Fanning's boat is a horse-boat, which necessarily affords accommodation far inferior to said steam ferry-boat; and that the granting of an injunction to restrain the running of said steam ferry-boat would be a great injury, both to defendants and the public. They further state, that the said city of Dubuque entered into said contract with said Gregoire by virtue of the power vested in said city by the 15th section of an act to incorporate and establish the city of Dubuque, of the Legislature of the State of Iowa, approved February 24th, 1847.

CHARLES BOGY.

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Sworn to and subscribed before me this 14th day of May, 1852.
J. J. DYER, *Judge*.

District court of the United States, district of Iowa, northern division.
January term, 1853.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE and CHARLES BOGY.

These defendants, now and at all times saving and reserving unto themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections, in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, answer and say:

That it is true that the legislature of the Territory of Iowa passed the acts in said petition mentioned, authorizing the complainant to keep a ferry across the Mississippi river.

But these defendants aver, that the said acts of the legislature did not confer upon the said Fanning the exclusive privilege of ferrying across the river aforesaid, and of transporting passengers, their baggage, teams, &c., &c., during the twenty years specified in said acts, upon his compliance with the requisitions of said acts.

These defendants deny that the said Fanning has in all respects fully complied with the provisions of the acts aforesaid, &c., &c., as in the said petition set forth; but say that he may possibly have managed things so that he has nominally complied with the same; that his ferry accomodations are far inferior to what they ought to be; and that if he ever had any hopes of making a livelihood for his family in that way, as alleged in his petition, that it would be more from the necessities of the public than the goodness of the accommodation.

That the ferry of the said Fanning was at an early day probably sufficient for the accommodation of the traveling public, but that the general growth of the country and the increase of business and travel render it necessary for the accommodation of the public that more ample and extended accommodations should be had; and that the ferry of the said Fanning is entirely inadequate and insufficient for the present wants of the public.

These defendants deny any combination or confederation with intent to defraud the said complainant; but they say that in pursuance of the growing wants of the city and the traveling community, and by virtue of a license granted by the city of Dubuque, the said Gregoire keeps a ferry across the Mississippi river opposite the city of Dubuque, and that he has put on it a good and substantial steam ferry-boat of sufficient capacity and dimensions to accommodate the traveling community; and that he ferries persons and goods across the said river from both sides,

and that the prices of ferriage taken from this side of the river are such as the city of Dubuque has prescribed.

That the said Bogy is the agent and attorney in fact of the said Charles Gregoire.

These defendants further show, that by section 15 of the act passed by the general assembly of the State of Iowa, approved 24th February, 1847, entitled "An act to incorporate and establish the city of Dubuque," it is enacted "that the city counsel shall have power, and it is hereby made their duty * * * * to license and establish ferries across the Mississippi river from said city to the opposite shore, to fix the rates of the same;" and that by virtue of the power therein given to the said city council, the said city of Dubuque granted to the said Gregoire the license aforesaid, a copy of which is hereto annexed, marked C, and asked to be taken as part of this answer.

And these defendants pray that the said petition be dismissed, and that they have their reasonable costs and charges in their behalf most wrongfully sustained.

SMITH & McKINLAY, and
HEMPSTEAD & BURT,
Solicitors for defendants.

STATE OF IOWA, *Dubuque county.*

Charles Bogy being duly sworn, says that the facts set forth in the above answer are true. CHS. BOGY.

Sworn to and subscribed before me this 4th day of January, 1853.
T. S. PARVIN, *Clerk.*

C.

Article of agreement made and entered into this eleventh day of November, A. D. eighteen hundred and fifty-one, between the city of Dubuque, of the first part, and Charles Gregoire, of the State of Missouri, of the second part. The said party of the first part, in consideration of the covenants and stipulation hereinafter enumerated, have granted a license to the said part of the second part to keep a ferry across the Mississippi river opposite the city of Dubuque, for six years from the first day of April next; it being understood that the said city grants all the right it has and no more, with the privilege to land at any point opposite the city that the party of the second part may choose. The party of the second part, in consideration of the said grant, agrees to pay to the city of Dubuque the sum of one hundred dollars annually, payable on the first day of August of each year. He further agrees to put on a good and substantial steam ferry-boat of sufficient capacity and dimensions to accommodate the traveling community, by the first day of April next; and to keep the same in good repair, and to ferry all persons and goods across the river for such price as the city of Dubuque may from time to time prescribe; it being understood that they can regulate only the price of such ferriage as is taken from this

side of the river. That in case the city of Dubuque shall wish to grant the said franchise to any railroad company before the expiration of said six years, then the same is to be surrendered to the city of Dubuque for that purpose and no other. In case the said boat should be destroyed by fire or inevitable accident, the said party of the second part may, if he choose, consider the contract at an end from that time.

Signed and sealed at Dubuque, in the State of Iowa, the day and year first aforesaid, with the seal of said city hereunto affixed.

P. A. LORIMIER, *Mayor*,
CHARLES GREGOIRE, [SEAL.]
By CHARLES BOGY, *his attorney in fact*.

Attest: HORACE ESTES, *Recorder*.

[Seal of the city of Dubuque.] [Which answer is endorsed:]

Filed January 4, 1853.

T. S. PARVIN, *Clerk*.

STATE OF IOWA, *County of Dubuque*.

I, T. S. Parvin, clerk of the United States district court, in and for the district of Iowa, by Benjamin Rupert, his deputy, hereby certify, that the foregoing is a true, correct, and examined transcript of the answer of the defendants in the said case of Timothy Fanning vs Charles Gregoire and Charles Bogy, on file in the said court.

In witness whereof I hereto sign my name and affix the seal of said court, in the city of Dubuque, Iowa, on this the 22d day of October, A. D. 1853. [L. S.]

T. S. PARVIN, *Clerk*.
By BENJAMIN RUPERT, *Deputy*.

DISTRICT COURT OF THE UNITED STATES,
For the district of Iowa, northern division.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE AND CHARLES BOGY.

And now comes the complainant, by his attorneys, and moves the honorable court to grant the injunction, as prayed for in bill of complaint.

B. M. SAMUELS,
D. S. WILSON,
Att'ys for comp't.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE AND CHARLES BOGY. } In chancery.

And now, to wit, at the January term, A. D. 1853, this day came the parties, by their attorneys, and the plaintiff claiming that the an-

swer of said defendants was insufficient to bar or prevent the recovery of the plaintiff, according to the prayer of his petition, this cause was set for final hearing on the bill, answer, exhibits, and the plaintiff's motion for an injunction; and the argument of counsel having been heard, and, upon consideration thereof, it appearing to the court that the ferry franchise of the plaintiff is not exclusive, and that the defendants have not, by establishing another ferry, interfered with his rights; it is therefore ordered, that the injunction be not granted, and that all moneys and certificates of deposit in the hands of the receiver, heretofore appointed in this cause, be delivered to the defendants, and that said petition be dismissed, and that the defendants have and recover of plaintiff their costs in this behalf expended, and that they have execution therefor; from which opinion and judgment the plaintiff, by his counsel, prays an appeal to the Supreme Court of the United States; and having shown, by satisfactory evidence, and it being admitted by the defendants, that the matter in controversy is worth at least three thousand dollars, the said appeal is allowed; thereupon the said Fanning filed his appeal bond, which was approved by the court; which said bond is as follows, to wit:

Know all men by these presents, that we, Timothy Fanning and William Young, are held and firmly bound unto Charles Gregoire and Charles Bogy, in the full and just sum of one thousand dollars, to be paid to the said Charles Gregoire and Charles Bogy, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, by these presents; sealed in the year of our Lord one thousand eight hundred and fifty-three, and on the twenty-third day of March of that year: Whereas, lately, at a district [court] of the United States, in a suit depending in said court, between the said Timothy Fanning, pl'ff, and Charles Gregoire and Charles Bogy, aforesaid, def'ts, judgment was rendered against the said Timothy Fanning; and the said Timothy Fanning having obtained and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Charles Gregoire and Charles Bogy, citing and admonishing [them] to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Timothy Fanning shall prosecute his suit to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

TIMOTHY FANNING, [SEAL.]
WM. YOUNG, [SEAL.]

Sealed and delivered in presence of—
CHARLES COSKERY.

Approved:

J. J. DYER,
U. S. dist. judge, for dist. of Iowa.

It is hereby admitted that the contract referred to in the answer of the defendant, by which contract the city authorities established a ferry, was entered into without any ordinance having been passed in reference thereto.

July 12, 1853.

UNITED STATES OF AMERICA,
District court of Iowa, northern division.

I, T. S. Parvin, clerk of the United States district court, in and for the State of Iowa, do hereby certify, that the foregoing is a true and correct copy and transcript of the papers and record in the foregoing entitled cause, (heard and tried in the city of Dubuque, in said State, and in and for the northern division of said court,) wherein Timothy Fanning is plaintiff, and Charles Gregoire and Charles Bogy are defendants, as the same remain on file and record in said office.

In witness whereof I have hereunto set my hand and seal of said court at office, in the city of Dubuque, this 9th day of July, [L. S.] A. D. 1853.

T. S. PARVIN, *Clerk.*
By BENJ. RUPERT, *Dep'y cl'k.*

United States of America, to Charles Gregoire and Charles Bogy, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the United States district court for the district of Iowa, wherein Timothy Fanning is complainant, and plaintiff in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable J. J. Dyer, judge of the district court of the U. S. for the district of Iowa, this 6th day of June, in the year of our Lord one thousand eight hundred and fifty.

T. S. PARVIN, *Clerk.*

Service of a copy of the above citation is hereby acknowledged, July 12, 1853.

SMITH & McKINLAY,
Solicitors for defendants.

CITY OF DUBUQUE, *July* 16, 1851.

The city council met. Present, the mayor, and Aldermen Molony, Bush, Farley, and Wood.

A proposition was read from A. L. Gregoire to furnish a steam ferry-boat to ply between the city of Dubuque and the Illinois shore.

Whereupon it was

Ordered, That the proposition be accepted, and that a written contract for that purpose be entered into.

Aldermen Mobley and Ogiblie were appointed a committee to fix the rates of ferriage.

CITY OF DUBUQUE, *August 4th*, 1851.

The council met. Present, the mayor, and Aldermen Bush, Malony, Ogilby, Farley, and Wood.

The committee appointed to fix the rates of ferriage between Dubuque city and the opposite shore reported the following as the rates agreed on, to wit:

For each footman	10	cents.
" man and horse	25	"
" led horse	15	"
" wagon and 2 horses, or oxen	75	"
" horse and wagon	50	"
For children under 16, free.		
For children over 16	5	"
For each hog, sheep, or calf	3	"
" gig or sulky, without horse	25	"
" " with horse	40	"
" head of loose cattle under 10	10	"
" " " over 10	8	"
Freight 100 lbs., in wagon or carriage, free.		
Each 100 lbs. loose freight	5	"

On motion, the report was accepted and the committee discharged.

CITY OF DUBUQUE, *Nov. 3d*, 1851.

The council met. Present, the mayor, Aldermen Bush, Molony, Farley, Ogilby, Booth, and Wood.

On motion, it was

Ordered, That a committee be appointed to act in conjunction with the city attorney, to prepare a contract with Chas. Gregoire for a steam ferry-boat to ply between Dubuque and the Illinois shore. Aldermen Booth and Bush were appointed said committee.

CITY OF DUBUQUE, *Nov.* 11, 1851.

The council met. Present, the mayor, and Aldermen Bush, Molony, Farley, Ogilby, and Booth.

The committee appointed to prepare a contract between the city of Dubuque and Charles Gregoire, to establish a steam ferry at Dubuque, reported a contract in accordance with their instructions.

And on motion the contract was accepted.

A bond was presented from Charles Gregoire, for the performance of his part of said contract, with Thos. McKnight and Wm. A. Jones for securities. And on motion the bond was approved.

CITY OF DUBUQUE, *March* 22*d*, 1852.

The council met. Present, the mayor, and Aldermen Molony, Bush, Farley, Ogilby, Booth, and Wood.

Ordered, That the failure of Mr. Gregoire to get his steam ferry-boat here at the time specified in the contract shall not work a forfeiture of his contract: Provided, he shall have said boat here at any time previous to the 15th day of April next.

A list of rates of ferriage between the city of Dubuque and the Illinois shore was submitted. Ald. Booth moved to amend, by substituting the rates of ferriage adopted by the board on the 4th day of August last, and the motion was agreed to.

Ordered, That the ferriage on lumber, between the city of Dubuque and the Illinois shore, shall be 50 cts. per M, if loose, or 20 cts. per M if loaded.

CITY OF DUBUQUE, *March* 29*th*, 1851.

Ordered, That the rates of ferriage between Dubuque and the Illinois shore be published.

CITY COUNCIL ROOM, DUBUQUE, *July* 19, 1852.

The city council met this day, and were present the mayor, and Aldermen Waples, McNamara, Stout, and Burt.

Mr. Stout submitted on behalf of Gregoire and Bogy, that they were now receiving no direct benefit from the ferry license granted them by the city, as Timothy or Timothy Fanning had instituted a suit against them in chancery, and a receiver was appointed to hold moneys until decision was had. He moved that the collection of the amount due for license of Bogy and Gregoire be suspended. Mr. McNamara objected on the ground that the contract was entered into with the city without regard to such consequences.

The motion was put by the mayor and carried: Messrs. Stout and Waples in the affirmative; McNamara in the negative; and Mr. Burt excused from voting by reason of his being Gregoire and Bogy's counsel.

CITY COUNCIL ROOM, DUBUQUE, *March* 28, 1853.

Mr. Bogy handed in $ for ferry license, due last summer, and he was ordered to deposit the same with the treasurer.

CITY COUNCIL ROOM, DUBUQUE, *April* 7, 1853

On motion of Mr. Burt the privilege was granted to Charles Bogy, for the time being, to land his ferry-boat at any convenient point between the south side of First street, and the north side of Second street.

STATE OF IOWA, *city of Dubuque.*

I, William H. Robbins, city recorder, do certify that the foregoing is a true transcript from the official records of the city council of Du-

buque, of all the official proceedings, so far as they relate to the action of said council in reference to making a contract with, and licensing Charles Gregoire and Charles Bogy, or either of them, to establish a steam ferry between said city and the Illinois shore.

Witness my hand and the seal of said city, at Dubuque, this
[SEAL.] 25th day of November, A. D. 1853.

W. H. ROBBINS, *City recorder.*

The aforegoing is part of the record in this case.

PLATT SMITH, *Att'y for defi's.*
T. S. WILSON, *Att'y for pl'ff.*

Assignment of errors.

TIMOTHY FANNING
vs.
CHARLES GREGOIRE and CHARLES BOGY.

And now comes the said Timothy Fanning, and says, that in the record and proceedings of the court below there are the following errors, to wit:

1st. The court erred in deciding that the ferry franchise of the said Fanning was not exclusive, and that the city of Dubuque had any right to, or did, legally establish another ferry.

2dly. The court erred in deciding that the defendants had not by establishing another ferry interfered with the rights of said Fanning.

3rd. The court erred in deciding that an injunction should not be granted, and ordering that all moneys and certificates of deposit in the hands of the receiver appointed in this cause should be delivered to the defendants.

4th. The court erred in rendering judgment that the petition of the said Fanning be dismissed, and that defendants should recover costs.

T. S. WILSON, *Att'y for the pl'ff.*

9991.

SUPREME COURT OF THE UNITED STATES.

No. 104.

THE UNITED STATES, PLAINTIFFS,

vs.

JOHN F. LEAVY.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF KENTUCKY.

Pleas before the honorable John Catron and Thomas B. Monroe, judges of the circuit court of the United States, for the 8th circuit and Kentucky district, held at the capitol in Frankfort, May term, eighteen hundred and fifty-three.

THE UNITED STATES against JOHN F. LEAVY. } Indictment for felony.

MAY TERM, *May 28th*, 1853.

This day came the attorney for the United States, and the prisoner, John F. Leavy, was again brought to the bar in custody of the marshal. Whereupon, the following order was made by the court.

Be it remembered, that in this case the prisoner, John F. Leavy, was arraigned on the following indictment, which had been removed to this court from the district court:

Indictment.

UNITED STATES OF AMERICA,
District of Kentucky, sct.

The grand jurors of the United States of America, empanneled at the May term of the court of the said United States, in the year of Christ eighteen hundred and fifty-three, and sworn, and charged to inquire in and for the body of said district, upon their oaths present: that John F. Leavy, late of the county of Franklin, in said district, laborer, heretofore, to wit, on the twenty-fifth day of March, in the

year of Christ one thousand eight hundred and fifty-three, in the district aforesaid, and within the jurisdiction of this court, did, with force of arms, unlawfully and feloniously steal, take, and carry away, out of, and from the post office at the city of Louisville, in the district aforesaid, a certain packet addressed and directed to Messrs. W. B. Shapard & Co., bankers at Nashville, Tennessee, then and there having enclosed in it the sum of four thousand and twenty dollars in notes of the banks of Tennessee; which said bank notes were articles of great value, to wit, of the value of four thousand and twenty dollars; and he, the said John F. Leavy, did then and there, with force and arms, unlawfully and feloniously open the said packet; and did then and there, with force and arms, unlawfully and feloniously embezzle the said packet, and the bank notes aforesaid, against the peace and dignity of the United States, and contrary to the form of the statute of the United States in such cases made and provided.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said John F. Leavy, heretofore, to wit, on the twenty-fifth day of March, in the year of Christ one thousand eight hundred and fifty-three, in the circuit aforesaid, and within the jurisdiction of this court, did, with force and arms, unlawfully and feloniously steal, take, and carry away, out of, and from the post office of the United States, at the city of Louisville, in the district aforesaid, a certain packet addressed and directed to Messrs. W. B. Shapard, & Co., bankers at Nashville, Tennessee, having enclosed in it the sum of four thousand and twenty dollars in notes of the banks of the State of Tennessee, which bank notes were articles of great value, to wit, of the value of four thousand and twenty dollars. And he, the said John F. Leavy, did then and there, unlawfully and feloniously, with force and arms, embezzle the said packet; and did then and there, unlawfully and feloniously, and with force and arms, embezzle the said bank notes, against the peace and dignity of the said United States, and contrary to the form of the statute of the United States in such cases made and provided.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said John F. Leavy, heretofore, to wit, on the twenty-fifth day of March, in the year of Christ one thousand eight hundred and fifty-three, in the district of Kentucky aforesaid, and within the jurisdiction of this court, did, with force and arms, unlawfully and feloniously take, steal, and carry away, out of, and from the post office at the city of Louisville, in the district aforesaid, a certain packet placed in said post office, to be carried in the mail of the United States of America, addressed and directed to Messrs. W. B. Shapard & Co., bankers at Nashville, Tennessee, having enclosed in it the sum of four thousand and twenty dollars in notes of the banks of the State of Tennessee, and amongst them a note issued by the Planter's bank of Tennessee for twenty dollars, dated January the first, one thousand eight hundred and forty-nine, signed by N. Hobson, cashier of said bank, and by M. Watson, president of said bank; and the said John F. Leavy did then

and there, with force and arms, unlawfully and feloniously open said packets, and did then and there, with force and arms, unlawfully and feloniously embezzle the said bank notes aforesaid, against the peace and dignity of the United States, and contrary to the form of the statute in such cases made and provided.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said John F. Leavy, heretofore, to wit, on the twenty-fifth day of March, in the year of Christ one thousand eight hundred and fifty-three, in the district of Kentucky, and within the jurisdiction of this court, did, with force and arms, unlawfully and feloniously take, steal, and carry away, out of, and from the post office in the city of Louisville, in the district aforesaid, a certain packet placed in said office to be sent by the United States mail, directed and addressed to W. B. Shapard & Co., bankers at Nashville, Tennessee, containing four thousand and twenty dollars in notes of the banks of the State of Tennessee, and amongst them three notes issued by the Bank of Tennessee, one of which said three notes was for the sum of ten dollars, signed by Wm. Ledbetter, cashier of said bank, and by W. Nichol, president of said bank; and two of said three notes were issued for twenty dollars each, and each of said two twenty-dollar notes were signed by S. R. Anderson, cashier of said bank, and were signed by Wm. Ledbetter, president of said bank; one of said twenty-dollar notes bears date November the first, one thousand eight hundred and fifty-one, and the other of said twenty-dollar notes bears date December the first, one thousand eight hundred and fifty-one. And the said John F. Leavy did then and there, in the district aforesaid, with force and arms, unlawfully and feloniously open and secrete said packet, and did then and there, with force and arms, unlawfully and feloniously embezzle said packet and the said bank notes, against the peace and dignity of the United States, and contrary to the form of the statute in such cases made and provided.

C. C. ROGUS,
U. S. Att'y, Ky.

(Endorsed:) A true bill.

BENJ. GRATZ,
Foreman.

To which indictment he, said Leavy, pleaded and admitted that he was guilty in manner and form as charged therein.

It appeared to the court that the use of the common jails, and also the use of the penitentiary house existing in Kentucky, were granted to the United States by the statutes of Kentucky, and that prisoners confined in the penitentiary were compelled to perform hard labor, and that those confined in the common jails of said Commonwealth did not perform hard labor, there being no mode provided in the common jails to employ prisoners at hard labor.

On these facts the question arose, whether any power or discretion existed in this court to imprison the defendant in a common jail of the